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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1942

No. 668

ALBERTA WEBER DEJONG,

Petitioner,

vs.

RUTH TIETSORT,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

JOHN JAMES ZISKA,
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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, Alberta Weber DeJong, respectfully prays for the writ of certiorari to the Circuit Court of Appeals for the Seventh Circuit to review a judgment of that Court entered on the 25th day of November 1942, in Case No. 7946, *Federal Life Insurance Company, an Illinois Corporation, plaintiff*, v. *Ruth Tietsort and Alberta Weber DeJong, interpleaded defendants;* on the appeal of *Alberta Weber DeJong* v. *Ruth Tietsort;* affirming a decree of the District Court of the United States for the Northern District of Illinois, Eastern Division, awarding the insurance fund in question to Ruth Tietsort.

Summary and Short Statement of the Matter Involved.

Federal Life Insurance Company, an Illinois Corporation, filed a bill of interpleader in the U. S. District Court for the Northern District of Illinois, Eastern Division, against Ruth Tietsort, a citizen of the State of Michigan and Alberta Weber DeJong, a citizen of the State of Illinois, invoking jurisdiction under Subdivision 26 of Sec. 41 of Title 28 of the U. S. Code (Rec. 1).

A decree was entered in interpleader, by which the insurance company was allowed, out of the fund of $3,000.00, payable under the policy, $150.00 reasonable attorneys' fees and $15.84 costs, and the balance of $2,834.16 was ordered to be deposited in the Registry of the Court. This was done, and the case proceeded upon the claims of Ruth Tietsort and Alberta Weber DeJong to the fund (Rec. 3).

It was agreed, and so found, that on March 1, 1924, Ruth Tietsort was married to Carroll S. DeJong and on March 2, 1926, while the marriage relation existed, the Insurance Company issued its accident policy in question, insuring Carroll S. DeJong. The beneficiary in the policy was described as: "Mrs. C. S. DeJong, hereinafter called the beneficiary, relationship wife" (Rec. 5). The policy provided for the payment of $2,000.00 to the beneficiary (increased by 10% each year until a total sum of $3,000.00 was reached) upon the death of the insured while riding in, or driving an automobile (Rec. 6, 7).

Carroll S. DeJong divorced his wife Ruth for desertion, on September 21, 1940, whereupon in October, 1940, she married one Tietsort, and was so married at the time of the death of DeJong. The insured, on November 2, 1940, married Alberta Weber, and she was his wife at the time of his death, November 30, 1940 (Rec. 5, 6).

The policy was produced by Alberta Weber DeJong (Rec. 5). Claim and proof of loss were made by both women, each of whom contended that she was the "Mrs. C. S. DeJong, wife" of the insured to whom the fund was payable,—Ruth Tietsort by reason of the fact that she was the wife at the time of the issuance of the policy, and Alberta Weber DeJong because she was the wife at the time of the death of the insured, and became his widow (Rec. 6).

The Policy provided that the consent of the beneficiary should not be required to a change of beneficiary or to any other changes in the Policy. Also, that "No change in this policy shall be valid unless approved by an executive officer of the Company and such approval be endorsed thereon" (Rec. 7).

Petitioner contended below, that by reason of the provision as to change of beneficiary without the consent of the beneficiary there was no vested interest in the Mrs. C. S. DeJong who was the wife of the insured at the time of the issuance of the policy; and that, the designation being a class designation of any wife of the insured, the person who answered to the designation of "Mrs. C. S. DeJong" and bore the relationship of wife to the insured at the time of his death, became entitled to the fund. This person was petitioner Alberta Weber DeJong, the second wife.

The District Court found that Ruth Tietsort, at the time of the issuance of the policy was designated the beneficiary and identified as "Mrs. C. S. DeJong, wife." That the divorce did not affect her right as beneficiary; and that the provisions of the policy relating to change of beneficiary not having been complied with, no change of beneficiary was effected; and that Ruth Tietsort was, therefore, entitled to the proceeds of the policy (Rec. 7, 8).

The District Court refused to hold the propositions of law presented by petitioner: that petitioner, at the time

of the death of the insured, answered the description of "Mrs. C. S. DeJong," and bore the relationship of wife to him: that Ruth Tietsort had been divorced by the insured and no award of any interest in the policy had been made to her: that she had thereafter married, and at the time of the death of the insured, she was not "Mrs. C. S. DeJong," who bore the relationship of wife to the insured; that only the Insurance Company could take advantage of a failure, if any, to make an endorsement of change of beneficiary on the policy, which it waived by interpleading; and that, in any event, no change was required to be endorsed, thereon, because Alberta Weber DeJong, the second wife, answered the description "Mrs. C. S. DeJong" and bore the relationship of wife to the insured at the time the policy became payable. In the alternative, the fund was payable to petitioner as Administratrix of the Estate of the insured, the first wife having ceased to be such wife at the time of the death of the insured (Rec. 9).

The Circuit Court of Appeals affirmed the decree, holding that under the law of Illinois, which it found to be applicable, because the policy was executed and issued in Illinois (Rec. 22), the designation "Mrs. C. S. DeJong, relationship wife" was not a class designation of the wife of the insured, but a specific designation by the insured of his then wife Ruth, who at the time of the death of the insured was Ruth Tietsort (Rec. 22); that the divorce for her wrong, from the insured, did not affect her rights; and, that if "the insured desired to change the beneficiary, he had to comply with the terms of the policy, and since no other selection of a beneficiary was made in the manner prescribed by the policy before the insured died, the beneficiary whose selection was valid has a vested interest in the fund" (Rec. 23). These holdings are contrary to the established law in Illinois and against the weight of Illinois authority.

Jurisdictional Basis.

1. The judgment of the Circuit Court of Appeals was entered on November 25, 1942 (Rec. 21); rehearing denied December 22, 1942.

2. Federal Life Insurance Company is an Illinois Corporation (Rec. 10). Petitioner at the time of the filing of the bill of interpleader was a citizen of Illinois, and respondent a citizen of Michigan (Rec. 1, 21). The policy in question was executed and delivered in Illinois (Rec. 22).

3. The Statute under which jurisdiction was invoked in the District Court, is Subdiv. 26 of Sec. 41, Title 28, U. S. Code (1940 Ed.); *Treinies* v. *Sunshine Mining Co.*, 308 U. S. 66. Jurisdiction here is invoked under Sec. 347, Title 28, U. S. Code (1940 Ed.); *Huguley Mfg. Co.* v. *Galeton Cotton Mills*, 184 U. S. 290.

Questions Presented.

1. Did the Circuit Court of Appeals, having found the law of Illinois to be applicable, follow it in this case.

2. Was the designation of beneficiary in the policy in question by the description "Mrs. C. S. DeJong, relationship wife" a class designation of any wife of the insured, or a specific designation of his then wife, Ruth, whom he afterwards divorced and who married one, Tietsort, before the death of the insured.

3. Was it the intent of the insured, as expressed in the policy, that the insurance money should be paid to his widow.

4. Is an insurance policy under the law of Illinois testamentary in character, speaking as of the time of the death of the insured, so that the person who answered to the description in this case of "Mrs. C. S. DeJong" and bore

the relationship of wife to the insured at the time of his death would take the fund.

5. Did the provision as to endorsement and approval of changes in the policy, refer to changes of beneficiary or only to other changes in the policy; and was not such a provision for the benefit of the insurance company, only, and waived by it in filing the interpleader. In any event, was any endorsement necessary in this case, or any request for change of beneficiary, in view of the class language of the beneficiary clause.

Reasons Relied On for the Granting of the Writ of Certiorari.

1. The decision of the Circuit Court of Appeals upon an important question of local Illinois law in the construction of an Illinois accident insurance policy, is in conflict with the decisions of the Supreme and Appellate courts of Illinois, and against the weight of Illinois authority.

2. The Circuit Court of Appeals, although it correctly held that the decision of the questions involved in this case was controlled by Illinois law, decided the case contrary thereto.

3. The Circuit Court of Appeals, in holding that the designation of beneficiary in the policy in this case as "Mrs. C. S. DeJong, relationship wife" was a specific designation of the then wife, Ruth, and not a class designation of any wife of the insured, ran counter to the decisions of the Supreme and Appellate courts of Illinois, and disturbed the settled law in Illinois upon the construction of insurance policies with class designation clauses; and has opened the door to litigation in all such cases in the future.

4. The Circuit Court of Appeals in holding that in order to permit the second wife of the insured, who became his widow, to take the fund, a change of beneficiary was re-

quired to be endorsed on the policy, even though the class designation of "Mrs. C. S. DeJong relationship wife" correctly described the second wife, held contrary to the law in Illinois, and in violation of the clearly expressed intent of the insured that his widow should be his beneficiary.

Wherefore your petitioner respectfully prays that a writ of certiorari be issued under the seal of this Court directed to the United States Circuit Court of Appeals for the Seventh Judicial Circuit, sitting at Chicago, Illinois, commanding said Court to certify and send to this Court on a day to be designated, a full and complete transcript of the record and all proceedings of the Circuit Court of Appeals had in this cause, to the end that this cause may be reviewed and determined by this Court; that the judgment of the Circuit Court of Appeals be reversed, and that petitioner be granted such other and further relief as may seem proper.

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Alberta Weber DeJong.